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40 Court: Montana had duty to warn of asbestos dangers

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HELENA — State officials had a responsibility to warn miners about decades of dangerous health conditions at a Libby vermiculite mine, but a trial is needed to determine if government officials failed to fulfill that duty, a divided Montana Supreme Court said Tuesday.

The 4-3 decision said the government's immunity from being sued was removed by the 1972 Montana Constitution and provides no protection from the claims of the miners suffering from years of exposure to asbestos in the mine, which W.R. Grace & Co., closed in 1990.

Montana law, for 92 years, clearly required the state to gather information about health problems in workplaces and pass on such information to its citizens, the court said. That created a legal duty for the government in this case, the justices concluded.

The ruling was a major blow to the state's defense against the claims of nine people who either worked at the mine or were married to people who did.

But the court did not determine whether the state did anything wrong or whether the government must pay any damages. A District Court trial is needed to settle those questions, the court said.

Still, the court did question the lack of action by the state in warning workers about the dangers associated with mining vermiculite after conducting four inspections

between 1956 and 1964.

The majority said the state's argument that it could not have foreseen the mine operators' failure to protect workers "rings hollow." Inspections showed nothing was being done by Grace or its predecessor, Zonolite Co., the court said.

Grace bought Zonolite in 1963.

"Plainly, the state knew as a result of its inspections that the mine's owner was doing nothing to protect the workers from the toxins in their midst," Justice Patricia Cotter said for the court.

Jon Heberling, a Kalispell lawyer for the nine Libby residents suing the state, said the high court ruling applies to scores of other miners who developed health problems while working at the mine.

"This may mean that the state has a duty to pay part, but not all, of the compensation for the Libby miners," he said.

"The potential here is very significant" because of major public health issues at stake, Attorney General Mike McGrath said of the ruling.

The nine residents appealed a district judge's ruling in 2001 that threw out their lawsuit against the state for failing to warn them about the dangers posed by the mine.

The vermiculite ore contained harmful levels of tremolite asbestos and is blamed for hundreds of illnesses and at least 200 deaths in the Libby area. The Environmental

Protection Agency has been cleaning up the mine site and other contaminated areas in the town since 1999. Libby was declared a Superfund site in 2002.

The plaintiffs contended state inspectors visiting the mine in the 1950s and 1960s reported on the toxicity of the vermiculite dust and concluded that the workers' exposure to it would eventually cause pulmonary disease. The plaintiffs argued that the information was never passed on to workers.

In arguments before the Supreme Court in June 2003, Heberling told the justices that the state "stood mute while a human disaster unfolded in Libby."

The state argued that nothing in the law required the government to warn workers about its findings and that the doctrine of sovereign immunity protected the state from the miners' suit.

The dissenting justices agreed, saying the alleged failure to warn miners about the dangerous place they worked occurred before the new constitution abolished government immunity, so the protection applies in this case.

In his dissent, Justice John Warner said he sympathizes with the plight of the miners suffering from health problems from asbestos exposure. "But it is simply incorrect as a matter of law for this court to redefine the doctrine of sovereign immunity, change it, or find a new way around it in an effort to provide a remedy," he said.